

ENTERED

June 05, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|----------------------------|---|----------------------------|
| RODERICK DEWAYNE ANDERSON, | § | |
| | § | |
| Petitioner/Defendant, | § | |
| | § | CIVIL ACTION NO. H-17-1264 |
| v. | § | (Criminal No. H-13-575-02) |
| | § | |
| UNITED STATES OF AMERICA, | § | |
| | § | |
| Respondent/Plaintiff. | § | |

MEMORANDUM OPINION AND ORDER

On July 10, 2015, defendant, Roderick Dewayne Anderson, filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody ("§ 2255 Motion") (Civil Action No. H-15-1985) (Docket Entry No. 191).¹ On February 11, 2016, the court entered a Memorandum Opinion and Order (Docket Entry No. 231) dismissing the § 2255 Motion and entered a Final Judgment (Docket Entry No. 232) dismissing Civil Action No. H-15-1985.

On April 24, 2017, Anderson filed a second Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (Docket Entry No. 300). The United States has filed a Motion to Dismiss § 2255 Motion (Docket Entry No. 308).

28 U.S.C. § 2255(h) states:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

¹All docket entry references are to Criminal No. H-13-575.

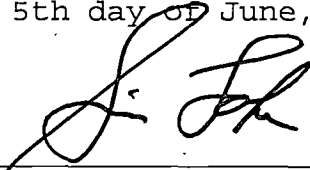
(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

This provision and 28 U.S.C. § 2244(b)(3)(A) act as a jurisdictional bar to a district court's consideration of a successive habeas petition until the court of appeals has authorized the district court to consider it. Because Anderson's second § 2255 motion is successive and Anderson has not obtained authorization from the United States Court of Appeals for this court to consider it, the government's Motion to Dismiss § 2255 Motion (Docket Entry No. 308) is **GRANTED**, and Anderson's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (Docket Entry No. 300) is **DISMISSED AS SUCCESSIVE**.

The Clerk of Court is **ORDERED** to provide a copy of this Memorandum Opinion and Order to Roderick Dewayne Anderson and to the United States Attorney for the Southern District of Texas, and to file a copy of this Memorandum Opinion and Order in the corresponding civil action.

SIGNED at Houston, Texas, on this the 5th day of June, 2017.



SIM LAKE
UNITED STATES DISTRICT JUDGE